IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 668 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATVERLAL DATANIA

Versus

STATE OF GUJ

Appearance:

MR MD PANDYA for Petitioner

MR BY MANKAD APP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 08/11/2000

ORAL JUDGEMENT

The original accused of Special Case No. 48 of 1990 of City Civil Court, Ahmedabad, has, by preferring this Criminal Revision Application under Sec. 397 of the

Criminal Procedure Code, 1973 (for short "the Cr.P.C."), challenged the correctness, legality and propriety of a Judgment Ex.21 dt. 1st April, 1991 of conviction and sentence rendered in aforesaid Special Case No.48 of 1990 by the learned Special Judge, Court No.4, Ahmedabad (who will be referred to hereinafter as the learned Judge of the trial Court).

2. The facts leading to this present Criminal Revision Application, in a nut shell, are as follows:-

2.1 The complainant D.B.Jhala, Police Sub Inspector, Traffic Branch, Gr.10, Ahmedabad was on duty at about 17-00 hours on 22/12/1979 at Paldi Circle, Ahmedabad. He was accompanied by Police Constables Rajendrasinh and Sadabhai. They were instructed to check the Auto Rickshaws which were being plied by mixing kerosene with petrol as fuel. The experts of the Forensic Science Laboratory (FSL for short) were also kept present near the Paldi Circle. At about 17.55 hrs. one auto-rickshaw which was coming from the direction of Sharda Crossing was found emitting huge smoke. The complainant, therefore, stopped the said rickshaw and sample of fuel was taken from the tank of the said rickshaw. On preliminary examination of the fuel by the Experts of FSL, it was found that there was a mixture of kerosene with petrol. Thereafter 375 ml. of petrol was taken in one glass bottle from the rickshaw, and a cork was applied on the said bottle. Thereafter, slip containing the signatures of two panchas and the complainant was tied and a seal bearing the mark of "AAS" was affixed on it. Thereafter, a detailed panchnama was drawn and the rickshaw and muddamal articles were seized. That, on interrogation of the rickshaw driver, it was disclosed that his name was Pravinchandra N. Dataniya, who is the present accused. Thereafter, the complainant lodged his complaint against the accused. The rickshaw in question, panchnama, muddamal articles and the complaint were handed over to the Ellisbridge Police Station for further investigation.

2.2 After completing the investigation and after receipt of the report from the FSL, the Ellisbridge Police Station filed a chargesheet against the accused.

2.3 As per case of the prosecution, accused has contravened the provisions of Kerosene (Restriction on Use and Fixation of Price) Order 1966 framed under Sec.3 of the Essential Commodities Act, 1955 and thereby he has committed an offence punishable under Sec.7 of the

Essential Commodities Act, 1955 (for short "the Act").

2.4 The learned Judge of the trial Court conducted a trial of case against the accused and ultimately he has come to a conclusion that accused has committed an offence punishable under Sec.7 of the Act for contravention of provision of Kerosene (Restriction on Use and Fixation of Price) Order, 1966.

2.5 The learned Judge of the trial Court, by rendering Judgment Ex.21 dt. 1st April, 1991, convicted the present petitioner for the aforesaid offence and sentenced him to undergo Rigorous Imprisonment for three months. As against that Judgment of conviction and sentence, original accused has preferred this present Criminal Revision Application.

3. I have heard Shri Mayur D. Pandya, the learned Senior Advocate for the revision petitioner and Shri B.Y.Mankad, the learned APP for the revision opponent -State in detail at length. I have also perused the judgment challenged in this Criminal Revision Application.

4. At the outset of arguments, Shri M.D.Pandya has fairly conceded that his arguments are limited to question of sentence only and not for any other points relating to merits of the case. Shri M.D.Pandya has argued that looking to the facts and circumstances of this case and antecedents of accused, the learned advocate for the accused had advanced his arguments before the learned Judge of the trial Court to grant him a benefit of probation under Secs. 360 of the Criminal Procedure Code, 1973, but the learned Judge of the trial Court declined to grant that benefit only on the ground that Sec.7 of the Act prescribes a minimum sentence of three months. The learned Judge of the trial Court has observed in his Judgment that to grant the benefit of probation to such person would tantamount to frustrating the legislative intent behind prescribing the minimum punishment for an offence punishable under the Act. As per arguments of Shri Pandya, the learned Judge of the trial Court declined to grant the benefit of probation only on one ground relating to minimum sentence prescribed for the offence punishable under Sec.7 of the Act.

5. Shri M.D.Pandya, the learned Senior Advocate for the revision petitioner has cited an authority of THE STATE OF GUJARAT VS. GANPATBHAI PREMJIBHAI JOSHI, reported in 1998 CR.L.J. 2160. In that case, the

learned Judge of the trial Court gave the benefit of probation under the provision of Probation of Offenders Act, 1958 to the accused who was held to be guilty for an offence under the provision of Essential Commodities Act. The State Government preferred a criminal appeal against that order of granting probation to the accused. This Court, by placing reliance on case of GHANSHYAM DAS vs. MUNICIPAL CORPORATION OF DELHI, reported in AIR 1975 SC 845, held that

" The provision with regard to minimum punishment will not come in the way because benefit of probation has to be given to the offenders under the provisions of Indian Penal Code as well as under the provisions of all other Statutes providing for penal offences unless they are specifically excluded either in the Statute itself or under the provisions of the said Probation of Offenders Act."

6. Shri M.D.Pandya, the learned Senior Advocate for the petitioner has argued that there is no provision alike provision of Sec.20(A)(A) of the Prevention of Food Adulteration Act, 1954 in the Essential Commodities Act, 1955. As per Sec.20(A)(A) of the Prevention of Food Adulteration Act, 1954, there is a specific bar for giving benefit of probation both under Sec.360 of the Criminal Procedure Code and the Probation of Offenders Act, 1958. Such type of provision imposing ban to grant probation is not made in the Essential Commodities Act, 1955, and therefore, in cited case, this Court confirmed the judgment of the trial Court and dismissed the appeal preferred by the State of Gujarat.

7. Shri M.D. Pandya has argued that in view of the above legal position, the learned Judge of the trial Court ought to have considered the request of the accused for granting him benefit of probation either under Sec.360 of the Criminal Procedure Code, 1973 or under Sec.4 of the Probation of Offenders Act, 1958. He has further argued that in view of Sec. 361 of the Criminal Procedure Code, 1973, if the Court is not inclined to grant a benefit of probation, then the Court is required to give special reasons in its judgment for not granting probation. Shri Pandya has further argued that these special reasons must be related to age, character, antecedents of the offender and the circumstances in which offence is committed. He has placed reliance on the case of BISHNU DEO SHAW vs. STATE OF WEST BENGAL, reported in AIR 1979 SUPREME COURT 964, wherein it has

been observed in Para 25 as follows :

" Apart from S.354(3), there is another provision in the Code which also uses the significant expression 'special reasons'. It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562 of the 1898 Code and provides for the release on probation of good conduct or after admonition any person not under twenty one years of age who is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or any person under twenty one years of age or any woman who is convicted of an offence not punishable with death or imprisonment for life, if no previous offence is proved against the offender, and if it appears to the Court, having regard to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct or after admonition. If the Court refrains from dealing with an offender under Section 360 or under the provisions of the Probation of Offenders Act, or any other law for the treatment, training, or rehabilitation of youthful offenders, where the Court could have done so. Sec.361, which is a new provision in the 1973 Code makes it mandatory for the Court to record in its judgment the 'special reasons' for not doing so. Section 361 thus casts a duty upon the Court to apply the provisions of S.360 wherever it is possible to do so. In the context of Section 360, the "special reasons" contemplated by S.361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders, and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Sec.354 (3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology. We will not, therefore, be wrong in assuming that the personality of the offender as revealed by his age, character,

antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors."

8. Shri Pandya has argued that the learned Judge of the trial Court has assigned reason for not granting benefit of probation but that reason cannot be said to be special reasons. That reasons should be special in consonance with legal position settled by the Hon'ble Supreme Court in case of BISHNU DEO SHAW (supra)

9. Under the circumstances, the request of the accused is required to be considered looking to his age, antecedents and circumstances of the case etc. Shri M.D.Pandya has drawn my attention to Para 15 of the judgment, wherein the learned Judge of the trial Court has observed that as per statement of accused, he was a young person and he had to support aged parents and that he is only earning member in his family. It was also urged that accused was likely to get Government job in near future. It appeared that accused was plagued with adversity and his plight and predicament could be said to be pitiable. Shri Pandya has argued that offence took place on 22/12/1979 and about 20 years have already passed, and therefore, it would not be just and proper to send the accused with aforesaid antecedents to Jail. During the course of his argument, he has submitted that accused has stopped driving Rickshaw on hire because Rickshaw involved in the offence was of the ownership of other person. He was merely driving that Rickshaw on hire, and therefore, benefit of probation be given to the accused.

10. In view of the above facts, that accused was a young person when incident of offence took place and that he is the only breadwinner in his family and that he has stopped driving Rickshaw on hire, this is a fit case in which benefit of probation is required to be given to the accused. Looking to the facts and circumstances of this case, ends of justice would be met, if probation is given to the accused.

11. In view of what is stated hereinabove, this Criminal Revision Application deserves to be partly allowed. Rule is made absolute to the aforesaid extent. The judgment of conviction dt. 1st April, 1991 passed by the learned Special Judge, Ahmedabad City, Ahmedabad in Special Case No.48 of 1990 is hereby confirmed. So far as said judgment of sentence is concerned, it is modified

by substituting the benefit of probation under Sec.4(1) of the Probation of Offenders Act, 1958, and accordingly, the revision petitioner is ordered to be released on his entering into a bond of Rs.5,000/(Rs. Five thousand only) with one surety of the like amount on condition to appear and receive sentence when called upon during the period of two years from the date of this Judgment and in the meantime, the revision petitioner is directed to keep the peace and be of a good behavior. This order is passed in exercise of powers conferred upon this Court under Sec.11 of the Probation of Offenders Act, 1958 read with Sec.4(3) of the said Act. The revision petitioner -Pravinchandra Natverlal Datania, shall remain under the supervision of the Chief Probation Officer, Ahmedabad City at Ahmedabad for aforesaid period of two years.

Office is directed to comply with the requirements of Sec.4(5) of the Act.

Date: 08-11-2000. (H.H.MEHTA,J.)
ccshah